STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Central Illinois Light Company d/b/a AmerenCILCO	:	08-0619
Central Illinois Public Service Company d/b/a AmerenCIPS	:	08-0620
Illinois Power Company d/b/a AmerenIP	:	08-0621
Proposal to implement a combined Utility Consolidated Billing (UCB) and Purchase of Receivables (POR) service. (Tariffs filed September 30, 2008).	:	(Cons.)

INITIAL BRIEF OF THE STAFF
OF THE ILLINOIS COMMERCE COMMISSION

LINDA M. BUELL
Illinois Commerce Commission
Office of General Counsel
527 East Capitol Avenue
Springfield, IL 62701
Phone (217) 557-1142
Fax (217) 524-8928
Email: lbuell@icc.illinois.gov

JESSICA L. CARDONI
MICHAEL J. LANNON
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (312) 793-3305
(312) 814-4368
Fax: (312) 793-1556
E-mail: jcardoni@icc.illinois.gov
mlannon@icc.illinois.gov

Counsel for the Staff of the
Illinois Commerce Commission

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Table of Contents

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Staff of the Illinois Commerce Commission ("Staff"), by and through its undersigned counsel, pursuant to Section 200.800 of the Illinois Commerce Commission's ("Commission" or "ICC") Rules of Practice (83 Ill. Adm. Code 200.800), respectfully submits its Initial Brief in the instant proceeding.

I. BACKGROUND

On September 30**,** 2008, the Ameren Illinois Utilities, Central Illinois Light Company d/b/a AmerenCILCO ("AmerenCILCO"), Central Illinois Public Service Company d/b/a AmerenCIPS ("AmerenCIPS"), and Illinois Power Company d/b/a AmerenIP ("AmerenIP") (collectively, "Ameren", the "Companies", or "AIU") filed with the Illinois Commerce Commission ("Commission" or "ICC") revised tariffs in order to

implement a combined Utility Consolidated Billing ("UCB") and Purchase of Receivables ("POR") service ("UCB/POR" or "UCB/POR Program") for the benefit of retail customers and retail electric suppliers ("RES"), pursuant to Section 16-118 of the Illinois Public Utilities Act (the "Act"), "Services provided by electric utilities to alternative retail electric suppliers," 220 ILCS 5/16-118. On November 13, 2008, the Commission entered Suspension Orders commencing the investigation concerning the propriety of Ameren's proposal to implement a combined UCB/POR service and on February 11, 2009 entered a Resuspension Order extending the suspension through August 26, 2009. In due course, the Administrative Law Judge assigned to this proceeding consolidated these matters (Tr., December 9, 2008, p. 8), and established a schedule for the submission of pre-filed testimony, hearings, and briefs (*Id*., p. 9).

In response to the Companies' filings, the following parties filed Petitions to Intervene, which were granted: Constellation NewEnergy, Inc; the People of the State of Illinois ("AG"); Dominion Retail, Inc. ("Dominion" or "DRI"); the Citizens Utility Board ("CUB"); the Illinois Competitive Energy Association ("ICEA"); the Retail Energy Supply Association ("RESA") (collectively, "ICEA-RESA"); and MidAmerican Energy Company.

At the April 6, 2009 evidentiary hearing in this matter, five witnesses testified on behalf of Staff. The Staff witnesses included: Theresa Ebrey, an Accountant in the Accounting Department of the Financial Analysis Division; Rochelle Phipps, a Senior Financial Analyst in the Finance Department of the Financial Analysis Division; Torsten Clausen, Director of the Office of Retail Market Development ("ORMD"); Philip Rukosuev, a Rate Analyst in the Rates Department of the Financial Analysis Division; and Christy Pound, a Market Development Associate in ORMD.

During the course of the proceeding, Staff and the parties proposed various modifications to AIU's proposed revised tariff filings implementing its UCB/POR Program. The Companies accepted certain of Staff's proposed tariff modifications, but did not accept others. Staff's proposed revisions to Ameren's "Supplier Terms and Conditions" ("STC") are attached as Appendix A; Staff's proposed revisions to Ameren's "Supplemental Customer Charges" ("SCC") are attached as Appendix B. Tariff language highlighted in green indicates language changes with which Staff and Ameren agree, and tariff language highlighted in yellow indicates language changes proposed by Staff with which Ameren does not agree. To the extent other parties proposed tariff changes with which Staff agreed, those changes are reflected in the Appendices. To the extent that Staff did not agree with other parties' proposed tariff changes, those changes are not reflected in the Appendices. For the reasons stated *infra*, Staff's modifications to the Companies' proposed tariff revisions should be approved by the Commission.

II. RESOLVED ISSUES

A. Partial Payment Posting

Staff witness Ebrey recommended that Ameren provide its process for posting partial payments for accounts under the UCB/POR Program in its surrebuttal testimony. (ICC Staff Exhibit 5.0, p. 6) Ms. Ebrey further recommended that the Final Order in these proceedings include findings and ordering paragraphs setting forth the appropriate process to apply partial payments from customers involved in the UCB/POR Program. (*Id.*, p. 7)

In surrebuttal testimony, Ameren witness Roger L. Pontifex stated that since the supply charges purchased from the RES will be owned by AIU, there was no need to identify a process for posting partial payments. (Ameren Exhibit 10.0, pp. 8-9) During cross-examination, Mr. Pontifex clarified that the process for posting partial payments received under the UCB/POR Program will be consistent with Ameren's process for posting partial payments for combination gas/electric customers, *i.e.*, applying payments to the oldest charges first.

Mr. Pontifex explained the process for the allocation of the uncollectibles applicable to each of the UCB/POR receivables and the utility delivery service receivables. At the time of write-off of the customer's account, the Customer Service System calculates the percentage each business represents of the total charges billed. It applies that percentage to the cash paid on the account and then applies each portion of calculated cash against respective UCB/POR and delivery charges to determine the uncollectible amount for each business. (ICC Staff Exhibit 5.0, Attachment A) This process is also consistent with the allocation made for combination gas/electric customers at the time of the write-off of their accounts. (Tr., April 6, 2009, pp. 34-36)

Staff witness Ebrey stated that based on the clarifications provided by Mr. Pontifex for posting partial payments and the allocation of uncollectibles between UCB/POR and delivery charges and since the procedures as outlined were consistent with the process currently in place for Ameren's combination gas/electric customers, in her opinion, the processes for posting partial payments and allocating uncollectibles at the time of write-off were reasonable. She further stated that she was withdrawing her rebuttal testimony recommendation that the process for posting partial payments at the

time of receipt be included in the Final Order in these proceedings. (*Id*., pp. 69-70)

B. "But not limited to" Language

Staff witness Ebrey also proposed language changes for both the STC and SCC tariffs to remove the phrase "but not limited to" that was included in certain definitions of costs eligible for recovery in the discount rate. The inclusion of this phrase in the definitions would leave the door open for the recovery of any type of costs in the discount rate. While the Companies claimed the process of designing and developing the necessary changes to the billing system and business processes was ongoing, they had "not identified any examples of the types of costs that might fall into the category of costs not yet anticipated."[1] (ICC Staff Exhibit 1.0, pp. 7-8)

Ameren witness Pearson argued in rebuttal testimony that since the "nature of all costs is not known," the phrase was necessary. (Ameren Exhibit 4.0-2REV, p. 6) Staff witness Ebrey replied that, since by Ameren's own admission it had not identified any other type of costs that had not already been considered in the definition of recoverable costs under the UCB/POR Program, leaving in this phrase would remove any limitation of costs to be recovered under the tariff revisions. (ICC Staff Exhibit 5.0, pp. 3-4) Ameren witness Pearson responded that retaining that phrase in the tariffs "adds needed flexibility given that some future costs may not yet be known." (Ameren Exhibit 8.0, pp. 3-4)

During the evidentiary hearings, counsel for Ameren stated that AIU would no longer oppose Staff's proposal to remove the "but not limited to" language from both the STC and SCC tariffs. (Tr., April 6, 2009, p. 66)

[1] AIU response to Staff Data Request TEE 2.01.

C. Disputed Charges

In rebuttal testimony, Staff witness Pound recommended three changes to Ameren's definition of "disputed charges" contained on 3rd Revised Sheet 5.017 of the STC. The first recommendation was to incorporate a provision that requires Ameren to provide contact information for the ICC's Consumer Services Division ("CSD") if a customer contacts Ameren to dispute a RES charge. (ICC Staff Exhibit 9.0R, p. 13) In surrebuttal testimony, Ameren witness Pontifex stated this provision was not necessary (Ameren Exhibit 10.0, p. 2) and that it "may be too restrictive, create added contacts to the CSD, and/or create a potential to inadvertently misrepresent the actual number of legitimate RES disputed charges." (*Id*., p. 4) During cross-examination, Mr. Pontifex agreed that the incorporation of this requirement into Ameren's definition of disputed charges was more educational, and that the Ameren Illinois Utilities felt they have an obligation to help educate customers through this transition. Ameren therefore agreed it was appropriate to add this language. (Tr., April 6, 2009, p. 36)

Ameren also accepted Staff witness Pound's second recommendation to change the term "bona fide" in the definition of disputed charges to "legitimate." (ICC Staff Exhibit 9.0R, p. 14) Ameren witness Pontifex agreed that this will provide consistency with language contained on 2nd Revised Sheet No. 5.012 of Ameren's STC referenced in both the Single Billing and UCB/POR Billing Options section. (Ameren Exhibit 10.0, pp. 2, 6)

Ameren further accepted Staff witness Pound's third recommendation to add the phrase "RES or the" to the definition of disputed charges to clarify that Ameren will consider a charge disputed upon notice from either the RES or the CSD. (ICC Staff

Exhibit 9.0R, p. 14) This is consistent with the recommended process for a common RES disputed charge under the UCB/POR Program as contained in the rebuttal testimony of Ameren witness Pontifex. (Ameren Exhibit 10.0, pp. 2, 6)

Staff witness Pound also recommended three changes to the Payment Due Date UCB/POR Program section of Ameren's Supplier Terms and Conditions contained on Original Sheet No. 5.032. The three recommendations were: (1) adding the phrase "as defined on sheet 5.017;" (2) removing the phrase "that are disputed by such retail customer;" and (3) changing "1" to "one." (ICC Staff Exhibit 9.0R, pp. 13-14) Ameren accepted these changes. (Ameren Exhibit 10.0, pp. 2, 6)

In Staff's view, Ameren's agreement to incorporate Staff's suggestions for the definition of disputed charges and the Payment Due Date UCB/POR Program section of Ameren's STC in addition to the explanation of Ameren's suspend charge mechanism for disputed charges (ICC Staff Cross Exhibit 1 – Pontifex p. 2) sets forth a fair and clear dispute resolution process for participants of Ameren's UCB/POR Program.

D. Recovery of Uncollectibles

Staff witness Ebrey proposed changes to both STC and SCC tariff language that discussed the full recovery of uncollected receivables. In order to provide the Companies with full recovery of all uncollected receivables, the actual write-offs of those receivables purchased under the UCB/POR Program should be compared with the dollar amount of uncollectibles included in the actual discounts taken in the purchase of receivables (the UCB/POR Discount Rate Uncollectible Cost Component ("UDC") rate, 0.82%, times the total amount of receivables purchased), rather than the anticipated amount of uncollectibles based on the assumed level of participation. (ICC Staff Exhibit

1.0, pp. 3-6) AIU witness Lynn D. Pearson accepted Staff's proposed language changes with some modification. (Ameren Exhibit 4.0-2REV, pp. 4-6) Staff witness Ebrey accepted Ameren's proposals and reflected them in Appendices A and B of her rebuttal testimony. (ICC Staff Exhibit 5.0, pp. 2-3)

E. Compliance Filing

AIU witness Pearson recommended a compliance period of 60 days subsequent to the date of the Final Order during which the Companies would finalize tariffs and pricing and accommodate any other changes resulting from the outcome of this proceeding. (Ameren Exhibit 1.0-REV, p. 24) Staff witness Rukosuev objected to Ameren's proposed compliance period of 60 days, because, although the Companies provided a rationale for a 60-day compliance period, Section 9-201(b) of the Act requires revised tariffs to be filed with the Commission within 30 days after the entry of a Final Order. Section 9-201(b) of the Act provides, in relevant part, that:

> Within 30 days after such changes have been authorized by the Commission, copies of the new or revised schedules shall be posted or filed in accordance with the terms of Section 9-103 of the Act, in such a manner that all changes shall be plainly indicated.

(ICC Staff Exhibit 4.0, p. 8)

In rebuttal testimony, Ameren witness Joseph M. Solari stated that, "Mr. Rukosuev appears to believe that AIU is requesting 60 days simply to make final tariff changes. That is not the case." (Ameren Exhibit 6.0, p. 3) According to Mr. Solari, the additional time requested for the compliance filing may be needed to implement effective and efficient system processes. (*Id*., p. 4) In rebuttal testimony, Mr. Rukosuev posited that his position may have been misunderstood by Mr. Solari with respect to a

proposed compliance date as opposed to the effective date of the tariffs. (ICC Staff Exhibit 8.0, p. 2) Mr. Rukosuev explained that, "Section 9-201(b) of the Act does not require that tariffs become effective within 30 days of the Final Order. The effective date of any tariff can be whatever the number of days after the Final Order that the Commission orders. Thus, the Commission could approve an effective date that is 60 days following the Final Order's date." (*Id.,* p. 3) As such, Staff witness Rukosuev recommended that the Companies file their compliance tariff sheets within 30 days of the Commission's Final Order pursuant to Section 9-201(b) of the Act and that the Commission approve the Companies' proposed effective date of 60 days from the date of the Final Order to ensure that their UCB/POR tariffs will be accurately and effectively implemented. (*Id*.)

In response to Staff data request PR 3.01 (ICC Staff Cross Exhibit 2 – Solari), Mr. Solari stated that "a compliance filing can be made within 30 days after service of the entry of the Final Order in this proceeding, with an effective date of 60 days from the date of service," thus agreeing with Staff witness Rukosuev (Tr., April 6, 2009, p. 48).

F. Subgroups Designation

AIU witness Pearson proposed program criteria and eligibility for UCB/POR services under Ameren's proposed tariffs in which service would be available to the following customer classes:

Eligible to participate in the UCB/POR Program	Not eligible to participate in the UCB/POR Program
DS-1 (residential customers)	DS-3b (general delivery service non-residential customers with a maximum monthly demand equal to or greater than 400 kW but less than 1,000 kW)
DS-2 (small general delivery service non-residential customers with a maximum monthly demand of less than 150 kW)	DS-4 (large general delivery service customers with a maximum monthly demand equal to or greater than 1,000 kW)
DS-3a (general delivery service non-residential customers with a maximum monthly demand equal to or greater than 150 kW and less than 400 kW)	
DS-5 (lighting service customers)	

(Ameren Exhibit 1.0-REV, pp. 16-17)

Staff witness Rukosuev objected to Ameren's proposed DS-3a and DS-3b subgroups designations because the inclusion of these designations would not be appropriate without prior Commission approval. (ICC Staff Exhibit 4.0, p. 5) As such, Mr. Rukosuev recommended that subgroup designations DS-3a and DS-3b not be used in Ameren's UCB/POR services tariffs. (*Id*.) Instead, Mr. Rukosuev proposed replacing subgroups DS-3a and DS-3b with an alternative designation by using language from Sheet No. 34.002 of Ameren's SCC tariff, which would replace subgroups DS-3a and DS-3b with "DS-3 (subject to the 400 kW limits of Rider BGS)." By doing so, Ameren could replace the references to DS-3a and DS-3b with DS-3 as approved by the Commission, while limiting the UCB/POR Program to customers subject to the 400 kW limits of Rider BGS. (*Id*., pp. 5-6) In rebuttal testimony, AIU witness Pearson agreed to use language from Sheet No. 34.002 to replace the references to DS-3a and DS-3b in the UCB/POR tariffs. (Ameren Exhibit 4.0-2REV, p. 14) Although in agreement with Mr. Rukosuev's alternative language recommendation, Ms. Pearson stated that she

agreed "not necessarily for the reasons he offers. As Mr. Rukosuev points out, there is no precedent for the DS-3a and DS-3b subgroups without prior ICC approval, but of course the ICC could give its approval regarding same in this docket." (*Id*.)

In rebuttal testimony, Mr. Rukosuev objected to Ms. Pearson's statement regarding Commission approval of the subgroups in this docket and explained that "[s]ubgroup designations DS-3a and DS-3b are not present in other Ameren tariffs on file with and approved by the Commission. As a result, inclusion of such designations in the Supplier Terms and Conditions and the Supplemental Customer Charges will cause a conflict between these two tariffs and other Ameren tariffs." (ICC Staff Exhibit 8.0, p. 4) Moreover, the Companies never requested that the Commission approve such designations in the instant proceeding, which dealt with specific language changes to various tariff sheets. (*Id.*) According to Mr. Rukosuev, if the Companies chose to incorporate DS-3a and DS-3b designations, each Company would be required to make separate filings to change the tariff language of all affected tariffs. (*Id.*, p. 5) As such, Mr. Rukosuev recommended that the Commission not approve DS-3a and DS-3b designations in this proceeding. (*Id*.)

G. Informational Filing

According to Ameren's proposed language regarding its Informational Filing, on proposed 3rd Revised Sheet No. 5.024 of the STC tariff, "[t]he amount of the UCB/POR Discount Rate shall be shown on an informational filing supplemental to this tariff." Staff witness Rukosuev requested a sample copy of the Informational Filing in order for Staff to be able to review its substance and form. (ICC Staff Exhibit 4.0, pp. 6-7) Further, in response to Staff data request PR 2.04, Ameren agreed to provide a copy of the

Informational Filing documentation in its rebuttal testimony. In rebuttal testimony, AIU witness Pearson provided a draft of the Informational Filing as Ameren Exhibit 4.4. In addition, Ms. Pearson stated, "[t]he AIU notes that Informational Filing provided in Ameren Exhibit 4.4 is a current draft and the AIU reserves the right to make any changes, edits or modifications that are needed to be in compliance with the Commission's Final Order, or any other changes needed to implement and facilitate the UCB/POR Program." (Ameren Exhibit 4.0-2REV, pp. 14-15)

In rebuttal testimony, Staff witness Rukosuev acknowledged that the Informational Filing was in the proper form and recommended that the Commission approve the Informational Sheet provided as Ameren Exhibit 4.4. Mr. Rukosuev also agreed that the provided draft could be modified to be in compliance with the Commission's Final Order. However, he noted that any change to the Informational Sheet had to be as a result of the Final Order in this docket and could not be for any other reason. (ICC Staff Exhibit 8.0, p. 6)

H. Staff's Reports to the Commission

As explained in III. Unresolved Issues, A. Discount Rate, 1. Staff's Balance Factor Proposal, *infra*, Staff proposed the preparation of two reports, within 12 and 18 months from the effective date of the instant tariffs, advising the Commission whether to initiate a proceeding to change the initial discount rate, in light of the statutory requirement that the discount rate "be subject to periodic Commission review."[2] In rebuttal testimony, Ameren witness Pearson agreed with Staff's proposal to prepare such reports during the initial rate period. (Ameren Exhibit 4.0-2REV, p. 7)

[2] 220 ILCS 5/16-118(c).

I. AIU's Reports to the Commission

Given that Ameren was in the process of implementing the changes necessary for the provision of the UCB/POR service, Staff witness Clausen recommended that Ameren provide an updated estimate of its UCB/POR start-up costs as of December 31, 2009. (ICC Staff Exhibit 3.0, p. 17) Mr. Clausen stated that the updated estimate should be provided on or before January 31, 2010 and should be in a form similar to Ameren's Response to Staff Data Request TEE 1.02. (*Id*.) Similarly, he also recommended that a final report be filed on January 31, 2011. The January 2011 report should include the actual and final UCB/POR start-up costs because Ameren's proposed tariffs state that the start-up costs "be limited to Incremental Costs incurred after the date amending Section 220 ILCS 5/16-118 of the Public Utilities Act through December 31, 2010." (*Id*.) Mr. Clausen further recommended that the Commission include this proposed additional reporting requirement in its Final Order rather than creating new tariff language for this provision since this reporting requirement was of limited duration.[3] (*Id*., pp. 17-18)

In addition, given that the initial UCB/POR Program Charge would be $0.03 per customer per month under Staff's proposal, Staff witness Clausen recommended that the Commission be made aware of any potential significant changes to the UCB/POR Program Charge after the initial rate period, which expires in May of 2012. (*Id.*, p. 24) Changes to the UCB/POR Program Charge would occur as a result of the reconciliation process at the end of the initial rate period. (*Id*.) To limit any significant changes, Mr. Clausen recommended that Ameren be required to inform the Commission if any

[3] As with Ameren's other proposed reporting requirements, such reports should be submitted to the Commission's Manager of the Accounting Department and the Director of ORMD.

changes to the UCB/POR Program Charge during the initial rate period were needed in order to prevent the UCB/POR Program Charge from reaching a level of more than $0.06 per customer per month subsequent to the initial rate period. As such, Staff witness Clausen recommended avoiding any drastic increases to the UCB/POR Program Charge at any time during the five-year cost recovery period. (*Id*.) This recommendation would apply even if the Commission were to adopt a cost recovery period other than the proposed five-year period.

In rebuttal testimony, Ameren witness Pearson agreed with Mr. Clausen's recommendations regarding AIU's reports to the Commission. (Ameren Exhibit 4.0-2REV, p. 7)

J. Bill Inserts

In her revised rebuttal testimony, Ms. Pearson stated her opposition to Staff witness Clausen's recommendation "to direct Ameren to include the retail electric supplier's required bill inserts when Ameren is billing the customer." (ICC Staff Exhibit 3.0, p. 20) (Ameren Exhibit 4.0-2REV, pp. 11-12) However, Ameren subsequently offered tariff language that was acceptable to Staff.

The revised language for Original Sheet No. 5.030, under Section D., Form of Bill, should read as follows:

> For RES choosing the SBO, the format of the single bill must conform with the Public Utilities Act ("Act"), i.e., Section 16-118(b), 220 ILCS, 5/16-118(b), and the applicable Commission rules. The RES shall include in the bill any bill insert required by the Illinois Commerce Commission or other regulatory body and provided to the RES by the Company. ~~The Company will credit the RES an amount equal to the additional costs actually incurred by the RES to perform mailing of such required bill inserts~~ <u>The RES shall bill the Company for additional costs actually incurred to perform mailing of such required bill inserts and do so pursuant</u>

> to a timely sent invoice. The Company shall provide notification of the upcoming bill insert not less than 90 days prior to the commencement of the mailing. The bill insert shall be provided to the RES not less than 60 days prior to the commencement of mailing. The RES shall make best efforts to accommodate all Company inserts. The Company shall make best efforts to minimize the size and weight of the insert. The Company shall adhere to all RES mailing standards, a copy of which the RES shall make available to the Company. Both the RES and Company shall confer in good faith to appropriately provide for all Company bill inserts.

In addition, the first paragraph on Original Sheet 5.031 should be modified as follows:

> For RES choosing the UCB/POR Program, the Company shall issue a bill for the monthly billing period for each Retail Customer with respect to which the Company is purchasing the RES' receivables for electric power and energy supply service that includes the necessary applicable electric power and energy supply service charges, electric power and energy usage data, resultant billing amounts, identification of the RES and other agreed upon billing information transmitted by the RES. Each such bill will include all information pertaining to supply service as required by 83 Illinois Administrative Code 410.210. The Company shall include in the bill any bill insert required by the Illinois Commerce Commission or other regulatory body and provided to the Company by the RES. The Company shall bill the RES for additional costs actually incurred to perform mailing of such required bill inserts and do so pursuant to a timely sent invoice. The RES shall provide notification of the upcoming bill insert not less than 90 days prior to the commencement of the mailing. The bill insert shall be provided to the Company not less than 60 days prior to the commencement of mailing. The Company shall make best efforts to accommodate all RES inserts. The RES shall make best efforts to minimize the size and weight of the insert. The RES shall adhere to all Company mailing standards, a copy of which the Company shall make available to the RES. Both the RES and Company shall confer in good faith to appropriately provide for all RES bill inserts.

These revisions are reflected in the proposed STC attached to Staff's Initial Brief as Appendix A.

K. Other

1. Future Tariff Filings

In his direct testimony, Staff witness Clausen offered a recommendation regarding future tariff filings resulting from Public Act 95-0700 (ICC Staff Exhibit 3.0, p. 18), to which no party objected. Mr. Clausen explained that there would be additional tariff filings in the future that implement other provisions of Public Act 95-0700, such as "stand-alone" UCB, "stand-alone" POR, and the purchase of uncollectible receivables requirement of Section 16-118(e) of the Act. He stated that it was not clear what level of demand there would be for services other than the combined UCB/POR service and what additional changes to Ameren's systems and/or processes might be necessary. He also stated that Staff planned to address these topics during the ongoing workshop discussions. However, Mr. Clausen opined that it was certainly possible that those future services would utilize some of the modifications to Ameren's systems and processes that were necessary for the provision of the UCB/POR service in the instant filing. As a result, he recommended that the Commission note in its Final Order in the instant proceeding that future tariff filings pursuant to Public Act 95-0700 could impact the level of the UCB/POR Program Charge and the UCB/POR discount rate. (*Id.*)

2. Off-Cycle Enrollments and Drops

In surrebuttal testimony, Ameren witness Pearson identified an additional item in the proposed STC that involved the handling of off-cycle enrollments and drops when there was no requested effective date specified in a Direct Access Service Request ("DASR"). (Ameren Exhibit 8.0, p. 5) Ms. Pearson stated that after further discussion with participants at the workshops, it was determined that Ameren would reject off-cycle

enrollments and drops when there was no effective date specified in a DASR. Her attached Ameren Exhibit 8.1 reflected this change. (*Id.)* Staff agrees with Ameren's characterization of the workshop discussions on this topic and Staff does not object to the proposed tariff change.

3. Additional Resolved Issues

Staff is unaware of additional Resolved Issues at this time. However, if other parties' Initial Briefs identify additional Resolved Issues, Staff will respond to those issues in its Reply Brief.

III. UNRESOLVED ISSUES

A. Discount Rate

1. Staff's Balance Factor Proposal

Staff witness Clausen recommended that the Commission, through its actions in this proceeding, encourage RES to participate in the UCB/POR Program. (ICC Staff Exhibit 3.0, p. 8) Mr. Clausen explained that while a UCB/POR offering with reasonable terms and conditions alone might not be sufficient to ensure that competitors would provide electric service to residential and small commercial customers, it certainly seemed plausible to assume that it would aid in achieving such a goal. Besides pursuing high participation rates in order to foster retail competition for small commercial and residential customers, he opined that the Commission should encourage participation in the UCB/POR Program because higher participation meant that a higher share of the UCB/POR start-up costs would be recovered from RES using the service. (*Id*.)

When a RES contemplated whether to enter a new market, Mr. Clausen reasoned, it was likely to take into account factors such as the electric utility's current and expected default rates (or "bundled" rates), the supplier's estimation of customers' willingness to switch to a different supplier, the supplier's financial and logistical ability to market to thousands or hundreds of thousands of customers, as well as the supplier's experience with the utility's electronic data interchange processes (or the anticipation thereof). He noted that in this proceeding the Commission obviously could not impact any of those conditions. (*Id*.) However, with respect to a market that had a purchase of receivables program, Mr. Clausen thought it reasonable to think that the terms and conditions of the program, such as the ones proposed in this tariff filing, are important factors to consider. (*Id.*, pp. 8-9) The level of the POR discount rate would likely be especially important, and that is indeed a factor the Commission could impact in the instant proceeding. (*Id.*, p. 9)

Thus, in Mr. Clausen's opinion, there are two principal aspects to consider in the context of using the discount rate as a policy tool to encourage retail electric supplier participation in the UCB/POR Program. First, he recommended that the Commission ensure a certain stability of the discount rate over time. Electric supplier participation in the UCB/POR Program could be expected to be higher when a RES was able to predict one of its major expenses over the long term. Second, he recommended that the level of the discount rate be set at a level that accomplished two things: (1) make it financially viable for a RES to take the UCB/POR service; and (2) ensure that a large share of the initial and ongoing UCB/POR costs were recovered from participating RES. (*Id*.)

In order to accomplish these objectives, Staff witness Clausen recommended that the Commission strive to keep changes to the discount rate at a minimum. (*Id*., p. 10) Specifically, he recommended that the Commission set the initial discount rate at a level higher than what Ameren proposed.[4] Doing so would reduce the likelihood that the discount rate needed to be changed if Ameren's uncollectibles expenses were updated in future rate cases. A discount rate that would not be changed until the initial rate period expired in May of 2012 would give RES a certain planning stability and allow the suppliers to incorporate the known discount rate level into their decision-making process as it relates to entering the market for residential and small commercial customers. (*Id*.) In addition, keeping the discount rate unchanged for the duration of the initial rate period would also ensure that the contributions from RES towards UCB/POR cost recovery remain meaningful even in times of rising uncollectible expenses. (*Id*., pp. 10-11)

To do so, Mr. Clausen recommended that the Commission create an additional component for the discount rate calculation. (*Id*., p. 11) Ameren's proposed discount rate was comprised of four components: (1) Commission-approved uncollectible expenses; (2) 100% of the POR start-up costs; (3) 25% of the UCB implementation costs; and (4) ongoing administrative costs. The addition of a fifth component, a "Balance Factor," creates the opportunity to recover a larger share of the UCB/POR costs from RES taking the service as well as the opportunity to allow Ameren to recover its uncollectible expenses, even if and when those expenses increase in the future, without having to change the discount rate. As such, Mr. Clausen encouraged the

[4] Using Ameren's current implementation cost estimates and Ameren's proposed Fixed Charge Rate of 27.15%, the initial discount rate would be 1.12%. If the Commission adopts Staff's proposed Fixed Charge Rate of 24.44%, the initial UCB/POR discount rate would be 1.09%.

Commission to set the discount rate at a level that allows for an extra "cushion" in cases of increasing Commission-approved uncollectible expenses for Ameren. He explained that the level of the Balance Factor would potentially vary during the initial rate period, depending on changes to the uncollectibles component. Specifically, Mr. Clausen recommended setting the initial level of the discount rate at 1.5%, which resulted in an initial balance factor level of 0.41%.[5] (*Id*., pp. 11-12) In addition, he recommended that, during the reconciliation process, any money collected through the Balance Factor be applied towards the UCB/POR Program Charge calculation. (ICC Staff Exhibit 7.0, pp. 5-6)

Mr. Clausen noted that Staff supported Ameren's proposal to revise the UDC pursuant to changes in Commission-approved uncollectible expenses and agreed with Ameren that "in order to minimize future controversy and to adhere to cost causation principles, this cost component should be based on a Commission approved level of uncollectible expense." (Ameren Exhibit 4.0-2REV, p. 8) However, he explained that the difference between Ameren's proposal and Staff's proposal was in the impact of a change to the UDC during the initial rate period. Ameren's proposal was to start with an initial discount rate that covered only the current UDC level, and therefore, any changes to the UDC would necessitate a change in the discount rate. Mr. Clausen's proposal of adding a Balance Factor allowed for the possibility to leave the discount rate unchanged during the initial rate period even if and when the UDC changes as a result of changes to the Commission-approved uncollectible expenses. (ICC Staff Exhibit 7.0, p. 2)

Mr. Clausen explained that Staff's recommendation to set the initial discount rate at a level higher than Ameren's proposed level highlighted the fact that three of the four

[5] This assumes the Commission adopts Staff's recommended Fixed Charge Rate of 24.44%.

discount rate components were entirely dependent on estimates regarding participation in the UCB/POR Program. For example, Ameren proposed to recover 25% of the UCB costs through the discount rate for the initial discount rate period. While Staff witness Clausen did not think such an allocation was unreasonable in order to keep the discount rate at a level that did not deter RES from taking the UCB/POR service, he also did not think there was anything inherently superior about using a fixed percentage allocation for the UCB costs, whether that was 25% or a different percentage. Mr. Clausen noted that the ultimate allocation between cost recovery through the UCB/POR Program Charge and cost recovery through the discount rate would depend on the success of RES using the UCB/POR service. Although it was entirely understandable that Ameren would use estimates of customers switching to an electric supplier that used the UCB/POR service, it should also be noted that it was just that – an estimate. With that in mind, Staff witness Clausen reserved the right to recommend changes to the 75% / 25% UCB cost allocation after the first reconciliation period. (ICC Staff Exhibit 3.0, pp. 14-15)

In addition, Staff witness Clausen opined that Ameren's criticism of the Balance Factor because of an alleged lack of "cost support" (Ameren Exhibit 4.0-2REV, p. 9) was misplaced. He stated that Staff never claimed that the proposed Balance Factor was tied to a particular cost component. More importantly, Ameren's proposed UCB cost allocation did not have "cost support" either. Ameren admitted that its proposed 75% / 25% split of the UCB costs was driven by its desire "to achieve a fair and balanced recovery of the costs and produce reasonable charges." (Ameren Exhibit 1.0-REV, p. 20) Ameren witness Pearson further admitted that "deference was also given

to the fact that the discount rate must be reasonable." (*Id.*) Staff did not criticize Ameren for the results-driven approach it chose. Moreover, Staff did not advocate modification of Ameren's proposed UCB cost allocation. Staff witness Clausen was somewhat surprised to find Staff's proposal criticized on the grounds that it lacked "cost support" when Ameren's own proposed level of the initial discount rate was largely determined by factors not strictly based on cost. He stated that he was aware of the fact that the issues in this proceeding required the Commission to take into account many public policy considerations and he appreciated Ameren's efforts to support those considerations. However, he opined that Ameren could not have it both ways by referring to policy concerns for its own proposal and at the same time holding other parties to some type of cost support standard. (ICC Staff Exhibit 7.0, pp. 3-4)

Mr. Clausen indicated that he shared Ameren's concern about the discount rate being set at a level that would discourage suppliers from using the UCB/POR service. As explained in III. Unresolved Issues, A. Discount Rate, 2. CUB's FCAA Proposal, *infra*, such concern was one of the reasons Staff recommended rejecting the Fair Cost Allocation Adjustment proposal advanced by CUB witness Thomas. By comparing POR discount rate levels in other jurisdictions, Staff was aware that its proposed 1.5% was on the higher end of the spectrum, but at the same time it still fell in the range provided by ICEA-RESA witness Ronald M. Cerniglia (ICEA-RESA Exhibit 1.0 Revised, p. 25). (ICC Staff Exhibit 7.0, p. 4)

Ameren witness Pearson stated that the Balance Factor was "a new concept" and that it would "add some complexity to an already complex discount rate formula." (Ameren Exhibit 4.0-2REV, p. 9) Staff witness Clausen agreed that the Balance Factor

was not part of Ameren's tariff filing but failed to see the relevance of Ms. Pearson's statement that the Balance Factor "has not been considered in the development of the AIU UCB/POR start-up cost estimate." (*Id*.) Mr. Clausen explained that it was difficult to imagine how the proposed modification to the calculation of the UCB/POR discount rate would impact Ameren's UCB/POR start-up cost estimates. He stated that by proposing the Balance Factor, he was not proposing to change any item related to the actual implementation of the UCB/POR service. As for additional complexity introduced by the Balance Factor, Mr. Clausen argued that the Balance Factor actually introduced some simplicity into the establishment of the discount rate. By adopting Staff's proposal, Ameren's tariffs would openly state the actual discount rate level and the Commission would know with certainty the exact level of the initial discount rate by the time it entered a Final Order in the instant proceeding. (ICC Staff Exhibit 7.0, pp. 4-5)

Ameren witness Pearson alleged that Staff did not explain how the Balance Factor would be integrated into Ameren's proposed reconciliation mechanism. (Ameren Exhibit 4.0-2REV, p. 9) However, in rebuttal testimony, Staff witness Clausen addressed those specific concerns in an attempt to avoid any potential future confusion during the reconciliations. (ICC Staff Exhibit 7.0, pp. 5-6) In surrebuttal testimony, Ms. Pearson agreed that Staff's modified proposal addressed those concerns. (Ameren Exhibit 8.0, p. 8)

In addition, Ameren initially claimed that Staff's initial proposal of applying money collected via the Balance Factor toward under-recovery of the uncollectible component was "inconsistent with the law." (Ameren Exhibit 4.0-2REV, p. 10) While Staff's modified proposal no longer directly applies any money collected via the Balance

Factor towards a component of the UCB/POR discount rate, Staff witness Clausen explained in his rebuttal testimony that the net effect of applying money collected through the Balance Factor towards either the uncollectible component or directly towards the UCB/POR Program Charge was exactly the same. The result would be a reduction to the calculation of the UCB/POR Program Charge. Also, the portion of Section 16-118(c) of the Act quoted by Ms. Pearson was that "the tariff filed pursuant to this subsection (c) shall permit the electric utility to recover from retail customers any uncollected receivables that may arise as a result of the purchase of receivables under this subsection (c)..." It seemed obvious to Mr. Clausen that the phrase "shall permit" was not synonymous with the phrases "shall require" or "shall obligate." In other words, Section 16-118(c) of the Act did not appear to preclude other types of recovery, although it expressly allowed for recovery from retail customers. (ICC Staff Exhibit 7.0, pp. 6-7)

Additionally, Dominion witness William L. Barkas stated that "Ameren's 0.82 percent uncollectible rate appears slightly on the high side compared to these other utilities' uncollectible rates shown on this chart." (DRI Exhibit 1.0, p. 4) Staff witness Clausen agreed with Ameren witness Pearson that Ameren "did not manipulate this data in order to inflate the level of uncollectibles." (Ameren Exhibit 4.0-2REV, p. 19) Staff witness Clausen stated that the 0.82 UDC component of the discount rate was based on the level of actual uncollectibles approved by the Commission in the most recent delivery service rate case. He claimed that while the 0.82% was higher than uncollectibles rates for utilities in other jurisdictions, it did not change the fact that Ameren's proposed uncollectibles rate had been approved by the Commission at the

most recent rate proceeding and was therefore the appropriate choice for the UDC component. (ICC Staff Exhibit 7.0, p. 20)

Accordingly, Staff recommends that the Commission adopt Staff's Balance Factor as an additional component in the discount rate calculation.

2. CUB's FCAA Proposal

CUB witness Christopher C. Thomas proposed what he termed a Fair Cost Allocation Adjustment ("FCAA"). (Corrected CUB Exhibit 2.0, pp. 6-8) Staff witness Clausen explained that the main difference between Ameren's proposal and Mr. Thomas' proposal concerned the calculation of the UCB/POR discount rate. (ICC Staff Exhibit 7.0, p. 15) Mr. Clausen stated that while not modifying Ameren's proposed 75% / 25% split of the UCB costs, Mr. Thomas' proposed FCAA allocated 75% of the UCB costs to both the RES (via the discount rate) and the eligible retail customers (via the UCB/POR Program Charge). The effect of the FCAA was to increase the initial discount rate to 1.63% (Ameren Exhibit 4.0-2REV, p. 17). The second difference was Mr. Thomas' recommendation to include interest charges on the 75% of the UCB costs that are recovered from eligible customers. However, Mr. Clausen noted the second difference between Ameren's proposal and Mr. Thomas' proposal would only materialize if the level of participation in the UCB/POR Program greatly exceeded Ameren's forecast. (*Id.*)

Mr. Clausen explained that Mr. Thomas' interest charge proposal would actually change the cost recovery *only* if the UCB/POR service attracted enough suppliers (and their customers) to collect, via the discount rate, not only enough revenue to cover 100% of the POR start-up costs, 100% of the UCB costs, and 100% of the ongoing

administrative costs, but also enough revenue to cover interest charges on 75% of the UCB costs. (*Id*., p. 16) In addition, Ameren would need to collect this revenue in no more than five years. Mr. Clausen opined that any additional benefits to eligible retail customers would therefore be speculative because Ameren's proposal already included a reconciliation mechanism that ensured that any recovery of more than 25% of the UCB costs through the discount rate would lower the UCB/POR Program Charge for all eligible retail customers. Accordingly, there would be no additional revenue to pay eligible retail customers any amount of interest charges unless all of the other costs allocated to participating suppliers, plus 100% of the UCB costs, were actually recovered from participating suppliers. For example, Mr. Clausen suggested that one assume the level of UCB/POR Program participation (customers switching to RES using UCB/POR) reached a level that resulted in revenues collected from electric suppliers, over the course of the five years, to cover 60% of the UCB costs, instead of the 25% assumed in Ameren's proposal. Such an outcome would lower the UCB cost contributions from all eligible retail customers to 40%, instead of the assumed 75% because of the reconciliations contained in Ameren's proposal. Under CUB's interest charge proposal the outcome would be the same, whether the proposed FCAA included interest charges or not. (*Id.*) Mr. Clausen concluded that the only time CUB's interest charge proposal would make a difference was if the UCB/POR Program participation brought in revenues that were greater than what was needed to cover 100% of the UCB costs, in addition to the POR and ongoing administrative costs. (*Id.,* pp. 16-17)

Mr. Clausen also pointed out that besides the likely insignificance of CUB's interest charge proposal, CUB's proposed FCAA, in contrast to Staff's proposed

Balance Factor, did not increase the likelihood of a stable discount rate during the initial rate period. (*Id.*, p. 17) Under CUB's FCAA proposal, the discount rate would automatically increase above the initial level of 1.63% once Ameren's Commission-approved rate of uncollectibles rose above the current 0.82%. Under Staff's proposal, the discount rate would not automatically increase if Ameren's Commission-approved rate of uncollectibles were to rise. Instead, Mr. Clausen proposed that Staff prepare a report to the Commission that would recommend whether to keep the current discount rate level or to change it. In addition, he stated that CUB's proposed FCAA would set the initial discount rate at a level higher than Staff's proposed 1.5%. (*Id.*)

However, Staff witness Clausen stated that if the Commission were to adopt the FCAA proposal, he recommended calculating the interest charges using the interest rate established by the Commission for customer deposits, found in. 83 Ill. Adm. Code 280.70(e)(1). (*Id.*)

Mr. Thomas stated that under his FCAA proposal, "RES and their customers would bear the costs of the POR and UCB programs as they use them" and the intent of his proposal "is to ensure that both RES and RES customers are paying a fair allocation of costs." (Corrected CUB Exhibit 2.0, p. 8) However, Mr. Clausen explained that those were not features unique to CUB's FCAA proposal. (ICC Staff Exhibit 7.0, p. 18) Mr. Clausen stated that Ameren's, Staff's, and CUB's proposals all ensured that the RES would bear the costs of the POR and UCB programs as they used them. He noted that Ameren's proposed cost recovery took into account that higher UCB/POR Program participation translated into a higher share of the costs being borne by the RES. Accordingly, CUB's proposed FCAA did not add anything new in this regard. Staff

witness Clausen also did not agree with CUB's claim that the FCAA will necessarily ensure that customers of retail electric suppliers "bear the costs of the POR and UCB programs as they use them." (Corrected CUB Exhibit 2.0, p. 8) Mr. Clausen noted that there did not seem to be any requirement in the FCAA proposal that would require a direct flow-through of UCB/POR implementation costs to the retail customers of suppliers using the UCB/POR service. He believed it was likely that the RES would try to recover those costs, similar to any other cost of doing business, from its customers. However, he stated that the ability to recover costs generally depended largely on the overall competitiveness of the market. (*Id*.)

Staff witness Clausen was also unable to agree with Mr. Thomas' statement that his proposed FCAA "sends an accurate price signal" (Corrected CUB Exhibit 2.0, p. 8) for the UCB and POR services. (*Id*., p. 19) Mr. Clausen explained that given that the "price" for the UCB/POR service was highly dependent upon several assumptions, it was difficult to make absolute statements about "accurate" and "inaccurate" prices for the UCB/POR service. For example, two of the main factors determining the level of the discount rate were the length of the cost recovery period and the number of RES customers using the UCB/POR service. If Ameren's forecasts of RES customers using the UCB/POR service turned out to be 50% below the actual experience, did that mean a significantly lower discount rate would have been sending accurate price signals? The same obviously held true for the reverse, as well. If Ameren's forecasts of RES customers using the UCB/POR service turned out to be 50% above the actual experience, did that mean a significantly higher discount rate would have been sending accurate price signals? Similarly, changing the length of the cost recovery period would

also greatly impact the level of the discount rate and therefore the "price" of the UCB/POR service. Accordingly, Mr. Clausen pointed out that it would be difficult for anyone to agree or disagree with the statement about "accurate" price signals. (*Id*.)

Accordingly, Staff recommends that the Commission not approve CUB's FCAA proposal in the instant proceeding.

3. Dominion's UCB Cost Component Proposal

Dominion witness Barkas recommended that "Ameren should use the authority granted it in Public Act 95-0700, which allows the utility to collect [the UCB costs] via distribution rates." (DRI Exhibit 1.0, p. 5) Staff witness Clausen pointed out that Mr. Barkas referred to Section 20-130(b) of the Act which addresses the Commission's authority to establish retail choice and referral programs for residential and small commercial customers. (ICC Staff Exhibit 7.0, p. 20) Mr. Clausen noted that the recovery of costs the utility incurs by providing UCB and POR services pursuant to Sections 16-118(c) and (d) is addressed in Sections 16-118(c) and (d), and not in Section 20-130 of the Act. These are separate and distinct sections of the Act, addressing separate and distinct topics. In addition, Staff witness Clausen agreed with Ameren that "a sharing of the UCB implementation cost [is] a reasonable approach." (Ameren Exhibit 4.0-2REV, p. 20) (*Id*., pp. 20-21)

Accordingly, Staff recommends that the Commission not approve Dominion's UCB cost component proposal in the instant proceeding.

B. Rate of Return in FCR

In this section of the brief, Staff will summarize the Fixed Charge Rate ("FCR") and the role of rate of return in establishing the FCR. Next, regarding the AIU proposal for an 8.45% rate of return, Staff will summarize its argument that the risk of recovery of implementation and POR start-up costs is lower than the risk of recovery of rate base and therefore should be given a lower rate of return. Finally, Staff will summarize the record regarding those risks and recommend a rate of return in the context of that record.

The AIU propose to recover implementation and POR start-up costs for the UCB/POR Program using a FCR to calculate the POR discount rate for RES and the UCB/POR Program Charge for eligible customers. The FCR includes a rate of return component to reflect the effect of the time value of money on unrecovered implementation and POR start-up costs. The AIU propose to multiply the FCR by total implementation and POR start-up costs in order to recover a levelized amount of the total costs each year for five years. (Ameren Exhibit 2.0, pp. 3-4)

Company witness Darrell E. Hughes proposed a 27.15% FCR, which includes an 8.45% rate of return that equals the average cost of capital for AIU electric delivery services. (*Id.*) Staff witness Phipps evaluated the Companies' proposed rate of return and presented Staff's recommended rate of return for the FCR calculation.[6] Originally, Ms. Phipps recommended a 23.74% FCR, which includes a 3.90% rate of return that equals the five-year yield on AAA-rated utility debt. (ICC Staff Exhibit 2.0R, pp. 1-2)

Ms. Phipps' analysis implies the UCB/POR assets are 100% equity-financed; in

[6] Ms. Phipps' recommendation is limited to the FCR calculation. She does not address the reasonableness of the Companies' proposed allocation of implementation costs between RES and eligible customers or the reasonableness of the UCB/POR cost estimate.

contrast, the AIU analysis reflects the Companies' actual capital structure and embedded costs of debt and preferred stock. (ICC Staff Exhibit 6.0, p. 2; Ameren Exhibit 2.2) Using the AIU capital structure and embedded debt costs is not necessary because doing would have no material effect on Staff's FCR recommendation due to the size of the UCB/POR assets, which is negligible relative to total AIU capitalization (*i.e.*, less than 0.10%);[7] nevertheless, the AIU opposed this aspect of Staff's analysis. (Ameren Exhibit 9.0, p. 3) Thus, Staff revised its original rate of return recommendation to reflect the AIU capital structure and embedded cost of debt, which effectively limits the contested rate of return issue to the appropriate cost of equity for the FCR calculation. Combining a 3.90% cost of equity with the AIU capital structure and embedded costs of debt and preferred stock results in an FCR that equals 23.75%.

Before proceeding with the argument regarding the relative merits of the AIU and Staff positions, some perspective of the magnitude of the difference between the AIU and Staff positions is in order. Under AIU's proposed 8.45% rate of return, the cost underlying the UCB/POR Program Charge would be $0.0385 per customer per month (rounded to a monthly charge of $0.04 per customer). Under Staff's proposed 3.90% rate of return, the cost underlying the UCB/POR Program Charge would be $0.0337 per customer per month (rounded to a monthly charge of $0.03 per customer). (Ameren Exhibit 4.4, p. 5) Clearly, the monetary difference between the AIU and initial Staff proposal is very small on a per customer per month basis. Given this small difference

[7] The AIU cost estimate for UCB/POR assets is less than $3 million (including a 20% contingency factor); in comparison, the total capitalization of the AIU equals $3.6 billion. (Order, Docket Nos. 07-0585 – 07-0590 (Cons.), 9/24/08, pp. 217-218) Adjusting Ameren Exhibit 2.2 to change only the cost of equity to 3.90% from 10.65% produces a 23.75% FCR. Adjusting Ameren Exhibit 2.2 to change the cost of equity to 3.90% and the capital structure to 100% equity (per Staff's original recommendation) produces a 23.74% FCR.

and the state of the record, Staff believes the final rate of return the Commission establishes for the FCR calculation is less significant than the Commission endorsing the financial principle that investments with lower risk than rate base assets should be authorized lower rates of return than the authorized rate of return on rate base.

The Companies' proposed rate of return is 8.45%, which equals the average cost of capital for AIU electric delivery services (Ameren Exhibit 2.0, p. 4), and it implies that the risk inherent in the recovery of UCB/POR Program costs equals the risk of AIU electric delivery services assets. (ICC Staff Exhibit 2.0R, p. 2) In Staff's judgment, UCB/POR assets are less risky than rate base assets and consequently warrant a lower rate of return than rate base assets. (ICC Staff Exhibit 6.0, p. 2)

A difference between electric delivery services assets and UCB/POR assets is that traditional base rates do not guarantee a return on unrecovered investment. That is, the Commission-authorized revenue requirement for AIU electric delivery services includes a targeted, fair return on unrecovered investment. Nevertheless, the utility could earn more or less than the targeted, fair return on investment depending on the degree to which its actual revenues, expenses and investment differ from the levels composing its revenue requirement. In contrast, the Companies' proposed UCB/POR Program Charge includes a component that would capture differences (either positive or negative) between actual and projected recovery of implementation and POR start-up costs. This "true-up" mechanism reduces risk associated with the UCB/POR assets relative to cost recovery through traditional base rates. (ICC Staff Exhibit 2.0R, pp. 3-4)

Ms. Phipps testified that the risk inherent in recovery of implementation and POR start-up costs closely resembles the risk of transitional funding notes. She described

three important features of the UCB/POR Program that resemble Illinois Power Company's transitional funding notes, as authorized in Docket No. 98-0488 ("Securitization").[8]

First, the Statutes authorizing the UCB/POR Program (Public Act 95-0700) and Securitization (Public Act 90-0561) explicitly require recovery of program costs by the utilities. (ICC Staff Exhibit 2.0R, p. 4)

Second, the Act provided for periodic adjustments to the instrument funding charges to ensure repayment of the transitional funding instruments, which is similar to the Companies' proposed UCB/POR Program reconciliation process that assures AIU will recover 100% of prudent costs incurred for the Program. Reconciliations are not features of traditional ratemaking and serve to reduce business risk. Only by removing the reconciliation process from the AIU proposal and thereby removing any assurance that AIU would recover 100% of the implementation and POR startup costs, would UCB/POR assets move closer in risk to rate base assets than AmerenIP's transitional funding notes. (ICC Staff Exhibit 6.0, p. 5)

Third, intangible transition property permits the utility to collect charges outside revenue requirement-based rates. Similarly, the UCB/POR Program Charge will be collected through the Supplemental Customer Charge instead of AIU's revenue requirement-based rates. Moreover, there will be periodic updates to the UCB/POR Program Charge for five years, at which point AIU will transfer all unrecovered UCB/POR costs from the POR discount rate to eligible customers via the Supplemental

[8] Generally, securitization provides a means by which a utility could recover costs that were incorporated in the traditional regulatory cost-plus scheme that cannot be passed on to customers in a competitive marketplace. *See* Standard & Poor's, "Research: Securitizing Stranded Costs," January 18, 2001, included in Ameren Cross Exhibit 1.

Customer Charge. (*Id.*, pp. 4-5)

Finally, Staff witness Clausen recommends including a fifth component in the POR discount rate, which is a balance factor that effectively allows AIU to recover from the RES an amount that exceeds the levelized costs initially assigned to the RES. (ICC Staff Exhibit 3.0, pp. 11-12) Including a balance factor in the POR discount rate calculation is similar to establishing cash and over-collateralization reserves, which were credit-enhancing features of Securitization. (ICC Staff Exhibit 2.0R, p. 5)

Those features of the UCB/POR Program that resemble transitional funding notes are precisely the reason UCB/POR costs are distinguishable from the AIU cost of capital. The unique features of AIU's UCB/POR Program, vis-à-vis "other utility-incurred costs to provide services," reduce the level of risk inherent in the UCB/POR assets in comparison to rate base assets. The rate of return investors require varies with risk; thus, the UCB/POR assets require a different rate of return than AIU rate base assets. (ICC Staff Exhibit 6.0, pp. 5-6)

The AIU disagreed with Ms. Phipps' use of a current bond yield to estimate the appropriate rate of return for UCB/POR assets. However, she explained that her rate of return recommendation is for unrecovered implementation and POR start-up costs, which are assets, not for financial securities such as debt and equity. She stated further that determining a rate of return on financial securities is not necessary for determining the rate of return on assets and, therefore, was not part of her analysis. (*Id.*, p. 2)

Furthermore, using a bond yield to estimate an equity return is fair in this analysis because when risk exposure is the same, then the investor-required rate of return is the same, regardless of the type of security issued. Ms. Phipps illustrated this principle

using Illinois Power Securitization L.L.C.[9] ("IPS LLC") as an example. When IPS LLC issued transitional funding notes, its capital structure comprised approximately 98% debt. When debt comprises nearly 100% of the capital invested in an asset, the investor-required rate of return for that asset will equal the investor-required rate of return if equity comprised 100% of the capital invested in that asset. A capital structure with virtually no equity capital provides debt investors virtually no insulation from business risk; therefore, investors' exposure to business risk is essentially identical whether the capital structure comprises either 98% debt or 100% equity. When risk exposure is the same, then the investor-required rate of return is the same regardless of the type of security issued. (*Id.*, pp. 2-3)

Finally, despite the relative insignificance of the UCB/POR cost in comparison to total capital, the AIU insisted that the rate of return for the FCR calculation should equal the AIU cost of capital because that rate of return would more closely reflect AIU's financing costs. This is an invalid assertion, which serves as the sole basis for the AIU's proposal to use its delivery services cost of capital in the FCR calculation. (*Id.*, p. 6) Specifically, Mr. Hughes stated:

> …my recommendation is based on the undeniable fact that both debt and equity will be required to finance the UCB/POR startup costs. (Ameren Exhibit 5.0, lines 66-68)
>
> * * *
>
> The financing of the UCB/POR program will not be from transitional funding instruments, nor from a separate issuance; rather, it will be financed with the overall financing requirements of the AIU. (*Id.*, lines 73-76)
>
> * * *

[9] Illinois Power Securitization L.L.C. is a special purpose limited liability company whose only material business related to AmerenIP's transitional funding notes.

> Financing costs will be incurred to pay for the UCB/POR startup costs. Financing costs include both debt and equity… Costs incurred to provide this service necessarily include financing costs, which, again, include both debt and equity. (*Id.*, lines 78-83)
>
> * * *
>
> Financing of this project cannot be done independently of other capital projects. The fact of the matter is, this project will be rolled into the overall financing requirements of AIU, which is supported with debt and equity on an ongoing basis. (*Id.*, lines 87-90)
>
> * * *
>
> Since the inherent financing costs are the same, it stands to reason an equivalent allowed rate of return is appropriate and prudent. (*Id.*, lines 114-116)
>
> * * *
>
> Since the UCB/POR startup costs will be excluded from recovery in future rate cases, it must earn a rate of return commensurate with other investments, otherwise there is a shortfall in recovery of financing costs. (*Id.*, lines 126-128)

Mr. Hughes reversed cause and effect when he erroneously argues that a company's overall cost of capital (*i.e.*, the weighted average cost of capital on all of a company's assets) determines the required rate of return on new assets it acquires. In fact, the opposite is true: the weighted average of the required rates of return of the assets a company holds determines its weighted average cost of capital. For example, as a company increases its holdings of low risk assets, such as U.S. Treasury securities, its overall cost of capital declines. Should the company ultimately hold nothing but U.S. Treasury securities, its overall cost of capital would ultimately equal the weighted average required rate of return on those U.S. Treasury securities. (ICC Staff Exhibit 6.0, p. 7)

Importantly, Mr. Hughes did not assess the risk of the UCB/POR Program.

Rather, he focused on the AIU's cost to finance rate base assets, as determined in a traditional ratemaking proceeding. Contrary to the AIU's implicit assumption that the risk of UCB/POR assets is equivalent to the risk of AIU rate base assets, there is little risk that the AIU will recover less than 100% of the costs it incurs to implement the UCB/POR Program. (*Id.*, pp. 7-8)

Financial literature confirms that projects with different risks warrant different rates of return. Specifically, one text states:

> The Company cost of capital is *not* the correct discount rate if the new projects are more or less risky than the firm's existing business. Each project should in principle be evaluated at its *own* opportunity cost of capital. (Brealey, Meyers and Allen, *Principles of Corporate Finance*, 9th ed. (2008), p. 239)

Similarly, another financial text reiterates that the cost of capital for a given project "should reflect the risk of the project itself, not necessarily the risk associated with the firm's average project as reflected in its composite [cost of capital]." (Brigham, Gapenski and Ehrhardt, *Financial Management: Theory & Practice*, 9th ed. (1999), p. 386)

Moreover, the Harvard Business School Press's publication of the Financial Management Association Survey and Synthesis Series confirms that this principle is also commonly accepted by financial practitioners:

> In a rare show of unity, the academic literature is virtually unanimous in recommending adjustments when evaluating projects with different levels of risk… Surveys consistently indicate that many companies make adjustments for projects or divisions with differing risks. (Ehrhardt, *The Search for Value: Measuring the Company's Cost of Capital* (1994), p. 102)

(ICC Staff Exhibit 6.0, pp. 7-8)

Mr. Hughes also argued that the authorized rate of return may understate the

true incremental costs of financing. He stated further:

> It is unknown how long the current financial crisis will impact the debt markets, but it is apparent that near-term debt borrowings are at rates exceeding those demonstrated in the last rate case. (Ameren Exhibit 5.0, lines 104-106)

Mr. Hughes' testimony implied that factors beyond risk affect the AIU financing costs. However, the factors affecting the cost for the AIU to finance rate base assets are not relevant to the FCR calculation and should be rejected. The only relevant factors in determining the appropriate rate of return for the FCR calculation are the amount of risk associated with the UCB/POR assets and the current market price of that risk. Ms. Phipps' rate of return estimate for the FCR calculation incorporated those two factors. In contrast, Mr. Hughes' estimate reflected neither factor. (ICC Staff Exhibit 6.0, p. 9)

Mr. Hughes erroneously asserted that investors cannot separate the risk inherent in the UCB/POR Program from the overall risk that investors view for all the AIU investments. To the contrary, it is a basic financial tenet that the investor-required rate of return is a function of risk. That is, lower risk translates into a lower rate of return. To argue otherwise contradicts financial theory. Further, by creating a separate rider for recovery of UCB/POR costs, an appropriately lower rate of return can be assigned to those unrecovered costs just as the creation of the Rider IFC made it possible to base it on the cost of transitional funding notes only, to the exclusion of the costs of Illinois Power's common equity and conventional debt and preferred stock. (*Id.*, p. 10) In summary, the AIU arguments opposing Staff's rate of return recommendation are either irrelevant to assessing the risk of assets or inconsistent with financial theory. As such, the Commission should reject the AIU rate of return proposal and the AIU arguments opposing Staff's rate of return recommendation.

During the first reconciliation period under the AIU proposal, the Commission will review implementation and POR start-up costs that the AIU seeks to recover through its UCB/POR-related tariffs and disallow those costs that the Commission deems imprudent.[10] Staff's original rate of return recommendation did not reflect this risk factor because AIU did not raise this issue until the evidentiary hearing. (Tr., April 6, 2009, pp. 77-78) Staff has a unique responsibility to the Commission to present unbiased recommendations that balance the interests of utility ratepayers and investors based on the entire record. Thus, even though the AIU did not raise the issue of prudence risk until the cross-examination phase of the proceeding, Staff is revising its rate of return recommendation to reflect the possible disallowance of UCB/POR assets that the Commission may deem imprudent because this risk factor is not present in the assets associated with transitional funding notes.

Staff recognizes that the Commission would not permit the AIU to recover from ratepayers any costs found to be imprudent; however, Staff also recognizes that a direct relationship exists between the magnitude of the assets and the effect of a prudence review on ratepayers and investors. In this case, the total cost estimate of the UCB/POR assets, including a 20% contingency factor, equals 0.10% of the AIU capitalization. As such, a disallowance would not significantly affect ratepayers or investors in light of the relative size of the UCB/POR assets vis-à-vis AIU rate base assets. Although Staff recommended the Commission recognize the prudence review as a source of risk for the AIU by including a premium for this risk factor in the allowed rate of return, Staff believes this premium is relatively small. That is, the risk related to

[10] The AIU agree to report total implementation and POR start-up costs by January 31, 2011. The first reconciliation period ends December 31, 2011.

any disallowance for the AIU is relatively insignificant. Consequently, the rate of return reflecting the risk of a prudence disallowance is much closer to Staff's original 3.9% rate of return rather than the Companies' proposed 10.65% cost of common equity.

Because the record does not address the size of the prudence risk premium, the first step is to narrow the range between the two rates of return described above. First, the cost of capital authorized in the AIU rate cases reflects the investor-required rate of return on equity into perpetuity. In contrast, the UCB/POR assets have an expected useful life of five years. All else equal, assets with different lives have different required rates of return. Ameren Cross Exhibit 1 illustrates this principle. The third to the last page of that exhibit (*Federal Reserve Statistical Release H.15*) shows yields on 5- and 30-year U.S. Treasury bond yields of 1.70% and 3.44% as of January 28, 2009, which is a difference of 174 basis points. The last page of that exhibit (*Reuters Corporate Spreads for Utilities*) presents spreads on utility bond yields relative to U.S. Treasury bond yields. For example, combining the two pages of the exhibit described above indicates that the January 28, 2009 yield on 5-year Aaa/AAA-rated utility bonds equals 3.90%, which is the sum of the 1.70% five-year U.S. Treasury yield and the 2.20% five-year Aaa/AAA spread. The last page of Ameren Cross Exhibit 1 shows the spread increases 35 basis points when the maturity for Aaa/AAA debt increases from 5 to 30 years. Similarly, there is a 100 basis point increase in the spread when moving from 5- to 30-year Baa2/BBB debt. Those two pages of Ameren Cross Exhibit 1 indicate that, all else equal, the five-year recovery period alone reduces the Companies' proposed 10.65% cost of common equity on implementation and POR start-up costs by 274 basis

points, or 7.91%.[11] To be clear, this recovery period adjustment, which reduces the cost of equity by 274 basis points, does not take into account any risk adjustment, such as that associated with the cost recovery rider's true-up mechanism or over-collaterization mechanism. (*See* ICC Staff Exhibit 2.0R, pp. 4-5) In summary, the record shows that the cost of equity for the UCB/POR assets is greater than 3.90% and less than 7.91%.

In Staff's judgment, this additional risk factor warrants adding 140 basis points to the five-year yield on AAA-rated utility debt, which equals the difference in spreads for five-year AAA-rated utility bonds and five-year BBB-rated utility bonds (See Ameren Cross Ex. 1). Staff's basis for using a BBB-rated bond yield is that the current senior secured credit ratings for the AIU are in the triple-BBB category. (Tr., April 6, 2009, p. 58) Staff's revised rate of return recommendation equals 5.30%, which produces a 24.44% FCR.

Staff's revised rate of return on common equity, 5.30%, has the advantage of being based on the AIU triple-B credit ratings and falls near the 5.91% midpoint of 3.90% (Staff's original rate of return recommendation) and 7.91% (the AIU cost of capital, adjusted by Staff to reflect a five-year recovery period). Yet, it is appropriate that Staff's 5.30% rate of return falls below the midpoint given the risk reducing features of the cost recovery rider (*i.e.*, true up and over-collateralization mechanisms) are more important risk factors than the prudence allowance for the reasons set forth by Staff previously.

For all the foregoing reasons, Staff recommends the Commission reject the AIU proposal to include a 27.15% FCR in the UCB/POR Program Charge formula and the

[11] 274 basis points equals the sum of: (1) the difference between five-year and 30-year U.S. Treasury bonds (or 174 basis points); and (2) the difference between five-year and 30-year BBB-rated utility debt (or 100 basis points). (Ameren Cross Exhibit 1)

POR Discount Rate formula. Staff recommends further that the Commission adopt a 24.44% FCR (including a 5.30% rate of return on equity), which balances the interests of ratepayers and investors.[12] Staff's revised FCR recommendation is reflected in Appendices A and B attached to this Initial Brief.

C. Amortization/Recovery Period of Costs

Staff witness Clausen agreed with Ameren that Sections 16-118(c) and (d) of the Act "provide the opportunity for reasonable cost recovery to AIU." The requirements of Sections 16-118(c) and (d) of the Act, and thus the electric utilities' expenditures to fulfill those requirements, are not optional for the electric utilities. Mr. Clausen stated that the UCB and POR services, on the other hand, are optional services for the RES. As a result, it would appear to be unreasonable that the certainty of the electric utility's cost recovery be entirely dependent on the RES level of participation in the UCB/POR Program. To do so would tie Ameren's ability for cost recovery to an infinite cost recovery period and, in Staff's judgment, such an assumption would not be reasonable. Mr. Clausen testified that it seemed intuitive to assume that a range of factors affect the decision of a RES to enter the market for residential and small-to-medium sized commercial and industrial customers,[13] of which many factors are likely outside the Commission's control. As a result, there is the possibility that only one or two RES will participate in the UCB/POR Program in the immediate future. Even if there are several RES taking UCB/POR service in the next few years, it is uncertain how successful the

[12] A 24.44% FCR produces a UCB/POR Program Charge that equals $0.03 and a POR Discount Rate (without a Balance Factor) of 1.09%. Combining a 24.44% FCR with Staff witness Clausen's recommendation to adopt a 1.5% POR Discount Rate results in a 0.41% Balance Factor.

[13] The focus is on the residential and small-to-medium sized commercial and industrial customers because Section 16-118(c) of the Act limits the availability of the POR offering to residential and non-residential customers with a non-coincident peak demand of less than 400 kilowatts.

suppliers will be in signing up customers, especially in the beginning. Having very few RES customers on the UCB/POR service will result in limited opportunities for cost recovery through the discount rate for the purchased receivables. (ICC Staff Exhibit 3.0, pp. 4-5)

However, Mr. Clausen noted it is also true that the law does not state the length of the cost recovery period. It would seem unreasonable to allow Ameren to recover the cost of providing UCB and POR service within a very short time frame, such as one or two years. Doing so would increase the UCB/POR Program Charge for eligible customers and it would not allow sufficient time for substantial cost recovery from retail electric suppliers. The question for the Commission then becomes how long Ameren should have to wait for cost recovery from the retail electric suppliers taking UCB/POR service. (*Id*., pp. 5-6)

Ameren proposed to have its UCB/POR start-up costs recovered within five years. In other words, Ameren proposed to wait for a maximum of five years total. However, Ameren also proposed to start collecting from eligible customers at the time the tariffs become effective in order to spread out over time the UCB/POR Program Charge that will have to be collected from all eligible customers. To put it differently, Mr. Clausen explained, Ameren does not want to wait until year four, for example, to find out how much of the UCB/POR costs have been recovered through the discount rate and then have to recover the remaining UCB/POR cost balance through the UCB/POR Program Charge in only one year. Under its proposed tariffs, there will be several reconciliations, with the first one taking place at the end of 2011. These reconciliations will allow for changes to the UCB/POR discount rate and the UCB/POR Program

Charge based on differences between estimated and actual cost recovery. (*Id.,* p. 6)

While Staff recommended that the Commission set a finite cost recovery period in this proceeding, Ameren's proposed five-year cost recovery period is not the only reasonable recovery period. The longer the discount rate for purchased receivables allows Ameren to recover more than its uncollectible expenses and ongoing administrative costs, the more RES participating in the UCB/POR service will pay towards the start-up and implementation costs. (*Id*., p. 12) To accomplish this goal, Staff recommended that the Commission consider either one of the following two options.

The first option is to leave the discount rate above the level that would be needed to recover Ameren's uncollectible and ongoing administrative expenses beyond the end of the five-year cost recovery period. (*Id*., p. 13) In other words, the Commission could decide to keep a positive Balance Factor even after the initial five years of the service have passed. Doing so would allow for the continued possibility of collecting money from retail electric suppliers taking the UCB/POR service even beyond the initial five years of the service. The revenues can then be used to offset any under-recovery of the actual uncollectible expenses experienced with the purchase of receivables beyond the five-year period. This would lead to a reduction in the UCB/POR Program Charge or even credits to all eligible customers after the end of the five-year recovery period. If the Commission chooses this option, it would not have to make a decision in this proceeding regarding the level of the Balance Factor after the end of the five-year period. Such a decision could be made during the final reconciliation process at the end of the five-year cost recovery period. (*Id*.) At that time, the Commission has the benefit

of knowing the actual percentage of the UCB/POR start-up costs recovered from the retail electric suppliers and from the eligible customers. (*Id*., pp. 13-14)

The second option is to increase the cost recovery period from Ameren's proposed five years to seven years.[14] (*Id*., p. 12) Staff witness Phipps addressed the implications of a seven-year recovery period to Ameren's proposed Fixed Charge Rate in her direct testimony, ICC Staff Exhibit 2.0R. (*Id*.) Staff's calculations, based on adjustments to the work papers provided by Ameren, appear to show that the cumulative effect of adding two years to the recovery period and changing the Fixed Charge Rate would not result in a change to the initial UCB/POR Program Charge, however.[15] (*Id.*, pp. 12-13) In addition, it appears that the resulting initial UCB/POR discount rate would be 1.04%.[16] Of these two options, Staff witness Clausen recommends extending the Balance Factor beyond the five-year recovery period in light of the fact that extending the cost recovery period to seven years does not significantly impact the initial UCB/POR Program Charge.[17] (*Id.*, p. 14)

Ameren continued to oppose any cost recovery period that would differ from its proposed five years because it coincides with the "five-year economic life for Information Technology (IT) investments of the type being made to implement the UCB/POR Program." (Ameren Exhibit 4.0-2REV, p. 11) However, Mr. Clausen noted that the Commission has to balance several interests in this proceeding and sometimes those interests are competing with each other. For example, the Commission is likely

[14] The tariff changes that would be needed to effectuate a seven-year cost recovery period are not reflected in Appendices A and B to Staff's Initial Brief.
[15] Referring to Attachment 1 of Ameren response to Staff data request TC 1.08.
[16] If the Commission chooses to adopt a seven-year cost recovery period, Staff recommends that the first reconciliation period be extended to the end of 2012, with a potential change to the discount rate becoming effective in June of 2013.
[17] According to Staff's calculations based on adjustments to the work papers provided by Ameren, the initial UCB/POR Program Charge would appear to remain at $0.03.

interested in ensuring that the UCB/POR Program Charge for all eligible customers stays within reasonable levels at all times. As Mr. Clausen explained in his direct testimony (ICC Staff Exhibit 3.0, p. 12), the longer the discount rate for purchased receivables allows Ameren to recover more than what is needed to recover its uncollectible expenses and ongoing administrative costs, the more RES participating in the UCB/POR service will pay towards the start-up and implementation costs. One way to achieve such a goal is to choose a cost recovery period that is not excessively short for the amount to be recovered. If the amount to be recovered was substantially larger than the amount at issue here, for example, and the standard book accounting life for such costs were two years, should the Commission be forced to adopt a cost recovery period of two years simply because the typical economic life of such costs is two years? Staff witness Clausen recommended that the Commission take such factors into account, but the cost recovery period ultimately adopted needs to meet broader public interest demands. (ICC Staff Exhibit 7.0, p. 8) In this case, a five-year cost recovery period is not inappropriate and it coincides with the typical book accounting life for IT investments. (*Id*., pp. 8-9) In addition, Mr. Clausen explained that while the costs to be recovered by Ameren are largely IT investments, they also include non-IT investments such as the following: (1) all legal and consultant costs; (2) incremental expenses for wages, salaries and benefits; and (3) costs or expenses associated with equipment, devices, or services that are purchased, provided, installed, operated, maintained or monitored for the UCB/POR Program.[18] Again, Staff is not faulting Ameren for proposing a five-year recovery period and Staff's primary recommendation actually supports a cost recovery period of five years. Staff witness Clausen recommended,

[18] 3rd Revised Sheet No. 5.017.

however, that the Commission not base its chosen cost recovery period solely on the typical accounting life of one of the main cost components. (*Id*., p. 9)

In summary, Staff's primary recommendation is to allow Ameren to recover the UCB/POR start-up costs within five years as proposed. The Commission should note in its Final Order, however, that the UCB/POR discount rate calculation will continue to include a positive Balance Factor after the initial five years of the service. Staff recommends that the Commission determine the level of such a future Balance Factor, as well as the number of additional years the Balance Factor should be used, at the end of the proposed five-year cost recovery period.

Staff's secondary recommendation is to extend the cost recovery period from the proposed five years to seven years.

D. "All-In"/"All-Out" Rule

Ameren's proposed tariffs included what is referred to as an "All-in or All-Out" provision that was intended to address "cherry-picking" concerns. Ameren witness Pearson stated that "if the Program rules, intentionally or otherwise, encourage RES to keep good-paying customers using dual billing or the single billing option (SBO) and put their remaining customers on the UCB/POR Program, the result could increase the level of the AIU average uncollectible cost." (Ameren Exhibit 4.0-2REV, p. 22) Staff witness Clausen shared her concern to a degree but he also recognized that the proposed All-In or All-Out provision could have severe negative consequences for RES currently providing single billing option ("SBO") or dual-billing service, as explained by ICEA-RESA witness Cerniglia (ICEA-RESA Exhibit 1.0 Revised, pp. 19-24). Mr. Clausen explained that the All-In or All-Out provision addresses a concern that is potentially

limited in scope. It only applies to RES that have the ability to utilize their own billing system in order to take advantage of SBO and dual-billing. This All-In or All-Out provision does not apply to RES that exclusively use the combined UCB/POR service. (ICC Staff Exhibit 7.0, p. 12) If a RES currently has the ability to perform credit checks, in addition to billing and collecting its charges from customers, there is nothing stopping such RES from "cherry-picking" customers as of right now. (*Id*., pp. 12-13) Mr. Clausen opined that Ameren's concern about potential increases to the "average historical bad debt rate of the utility as established in a rate case" (Ameren Exhibit 4.0-2REV, p. 22) appeared to be limited to situations where the availability of the UCB/POR service encouraged some RES to increase its cherry-picking efforts. He explained that the "average historical bad debt rate of the utility as established in a rate case" will only be negatively affected if, all else equal, additional "good-paying" customers move to a RES or additional "poor-paying" customers move to bundled utility service. The availability of UCB/POR should not necessarily result in additional "good-paying" customers moving to a RES that has SBO or dual-billing capability. Mr. Clausen stated that the scenario Ameren seemed to be concerned about was where the availability of UCB/POR would widen the targeted customer segment for a RES that had previously limited itself to a narrower customer segment. For example, a SBO or dual-billing capable RES might have been only cherry-picking among customers with demands of 150kW-400kW. The availability of UCB/POR might make it cost-effective for such a RES to market to small commercial customers with demands of less than 150kW (Ameren's DS-2 customer class). Without the All-In or All-Out provision, the RES could screen for good-paying DS-2 customers in order to sign them up via SBO or dual-billing. Of course, the RES

would have had the opportunity to do so even before UCB/POR became available. (*Id.,* p. 13) Mr. Clausen opined that Ameren's concern seemed to be targeted at situations that lead to additional cherry-picking by SBO or dual-billing capable RES among customer classes that are currently seeing little or no competitive activity. (*Id.*, pp. 13-14)

As a result, while Staff witness Clausen believes there could be additional cherry-picking by RES that are SBO capable, he is also concerned that the All-In or All-Out provision comes at a heavy price. (*Id*., p. 14) The proposed provision will potentially limit the appeal of the UCB/POR Program exclusively to RES that are not SBO or dual-billing capable. Thus, Mr. Clausen did not object to Mr. Cerniglia's request to remove the All-In or All-Out provision under the condition that Ameren continue to track the number of SBO accounts for suppliers that also use the UCB/POR service. Mr. Clausen further recommended that, if the additional number of such SBO accounts within twelve months following the effective date of the instant tariffs reaches a level that, in Ameren's assessment, would impact its "average historical bad debt rate," Ameren should submit a tariff filing at that time that institutes an All-In or All-Out provision. Along with the tariff filing, Ameren should provide evidence supporting its assessment. (*Id*.)

In rebuttal testimony, ICEA-RESA witness Cerniglia proposed to limit the All-In or All-Out provision to the residential customer class. (ICEA-RESA Exhibit 2.0, p. 4) Staff has no objection to applying the All-In or All-Out provision to the residential class and to combine it with Staff's recommendation regarding the tracking of SBO accounts. Accordingly, if the additional number of DS-2 and DS-3 SBO accounts within twelve

months following the effective date of the instant tariffs reaches a level that in Ameren's assessment would impact its "average historical bad debt rate," Ameren should submit a tariff filing at that time that institutes an All-In or All-Out provision for non-residential customers as well.

E. Definition of Power and Energy

In revised rebuttal testimony, Ameren witness Pearson stated that Renewable Energy Credits ("RECs") are financial instruments and fall outside the scope of electric Power and Energy Service as defined by AIU with respect to the UCB/POR Program." (Ameren Exhibit 4.0-2REV, p. 25) Staff witness Clausen responded that he did not agree with Ameren's interpretation of its proposed definition of Power and Energy Service. (ICC Staff Exhibit 7.0, pp. 11-12) He pointed out that Ameren's proposed definition of Power and Energy Service states that "components the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements" are included in such Power and Energy charges.[19] (*Id.*, p. 11) In order to offer retail electric service in Illinois, a RES is required to comply with all relevant laws and regulations, including the requirements of Public Act 95-1027. Among other provisions, Public Act 95-1027 modifies Section 16-115(d)(5) of the Act to require RES to "procure renewable energy resources…in amounts at least equal to the percentages set forth in subsections (c) and (d) of Section 1-75 of the Illinois Power Agency Act."[20] (*Id*.) The new law further states that "an alternative retail electric supplier need not actually deliver electricity to its customers to comply with this Section, provided that if the

[19] 3rd Revised Sheet No. 5.018.
[20] 220 ILCS 5/16-115(d)(5).

alternative retail electric supplier claims credit for such purpose, subsequent purchasers shall not receive any emission credits or renewable energy credits in connection with the purchase of such electricity."[21] (*Id.*, pp. 11-12) Mr. Clausen opined that it would seem illogical to exclude RECs from the definition of Power and Energy Service when a RES is permitted to purchase RECs in order to comply with statutory renewable energy requirements. (*Id.*, p. 12)

In surrebuttal testimony, Ameren witness Pearson proposed to modify the Definition of Power and Energy Service to include the following sentence: "Power and Energy Service may include supply products that utilize renewable energy credits in meeting load requirements." (Ameren Exhibit 8.0, p. 9) Staff appreciates Ameren's efforts to acknowledge that there are other charges that should be included in the definition of Power and Energy Service. However, singling out RECs and specifically mentioning them in the proposed definition could lead to an impression that other statutory renewable energy requirements are excluded. For this reason, Staff continues to believe that Ameren's original proposed definition covers all components the RES is obligated to procure to meet its customers' instantaneous electric power and energy requirements. Such a recommendation seems especially appropriate given that legislation is currently pending to modify the renewable energy compliance standards found in Public Act 95-1027.[22]

[21] *Id.*
[22] Senate Bill 2150 has passed the Senate and has been assigned to the Public Utilities Committee in the House.

F. CUB's Consumer Protections

CUB witness Bryan McDaniel recommended that Ameren's tariff filing to implement a UCB/POR Program be "rejected as premature and that Ameren be directed to refile its UCB/POR tariffs after the current…workshop process…addressing consumer protections on UCB/POR in the retail electric market has concluded." (CUB Exhibit 1.0, p. 2) In Staff's opinion, rejecting this tariff would be inconsistent with the intent of Senate Bill 1299 and the Retail Competition Act of 2006. Both pieces of legislation added sections to the Act in response to the lack of retail electric choices for residential and small commercial customers, and were intended to "promote the development of an effectively competitive retail electricity market…", 220 ILCS 5/20-102(d). Section 16-118 of the Act specifically requires that Ameren file tariffs offering UCB/POR services to RES. Moreover, Staff witness Pound described the many consumer protections that were currently in place for electric choice customers. These included but were not limited to: RES certification rules, marketing disclosure requirements, pricing disclosures, disclosures of terms and conditions, including early termination fees, disclosures of technologies or fuel types used to generate electricity, itemized billing, consumer education, verifiable authorization to switch a supplier, dispute resolution, payment arrangements, budget billing and rules governing the disconnection of service. (ICC Staff Exhibit 9.0R, pp. 2-3)

In response to CUB witness McDaniel's discussion regarding CUB's experience with Natural Gas Choice in Northern Illinois (CUB Exhibit 1.0, p. 4), Staff witness Pound explained that while customer protections for electric supply customers have been in place since 1997, some of these requirements have not existed on the natural gas side.

Recently, the Governor signed Senate Bill 171 into law on April 10, 2009,[23] implementing consumer protections for customers of alternative gas suppliers. Ms. Pound stated that some of the customer protections newly enacted through Senate Bill 171 already existed on the electric side. These included the letter of authorization, third party verification, customer-initiated call requirements for verifiable authorization to switch a customer's supplier, and complaint and penalty procedures. (ICC Staff Exhibit 9.0R, p. 4)

CUB witness McDaniel also expressed concern about the lack of consumer protections dealing with uniform pricing, which he claimed would enable customers to compare RES products on an "apples to apples" basis. (CUB Exhibit 1.0, p. 8) Staff witness Pound replied that it was not entirely clear what Mr. McDaniel meant by "consumer protections" in this reference, but strict uniform pricing of all competitive electric products and services might not be desirable. For example, she explained that a variety of à la carte and package options exist for both landline and mobile telephone services, which would not be possible with strict uniform pricing requirements. Existing pricing disclosure requirements both in the Act and in 83 Ill. Adm. Code 451 ("Part 451") require RES to provide customers with written information prior to any supplier switch that discloses the prices, terms and conditions of the products and services being sold to the customer. (ICC Staff Exhibit 9.0R, pp. 7-8)

CUB witness McDaniel stated in rebuttal testimony that Part 451 does not address the relationship between the supplier and the customer other than requiring suppliers to keep customer information confidential. (CUB Exhibit 3.0, p. 2) However,

[23] At the time Staff witness Pound filed rebuttal testimony, Senate Bill 171 was awaiting the Governor's signature. (*See* ICC Staff Exhibit 9.0R, p. 4)

Mr. McDaniel did not reference existing customer protections included in Section 451.310 that directly address the relationship between the RES and the customer by requiring marketing materials containing prices terms and conditions to adequately disclose the prices, terms and conditions of the products the RES is offering the customer; requiring RES to adequately disclose in plain language the prices, terms and conditions of products being offered to the customer before any customer is switched from another supplier; requiring RES to disclose to the ICC and customers substantiating any claim made by a RES regarding fuel types and technologies used to generate the electricity being offered; requiring itemized billing statements; requiring RES to include materials compromising the ICC's consumer education program with all initial mailings to potential residential and small commercial retail customers and before executing any agreements or contracts with such customers; and requiring RES to provide the ICC's consumer education materials at no charge to residential and small commercial retail customers upon request. (ICC Staff Exhibit 9.0R, p. 3)

In direct testimony, CUB witness McDaniel referred to the processes currently found in 83 Ill. Adm. Code 280 ("Part 280") as "back end," and further stated that the ICC complaint process should not be the customer's only outlet to settle a dispute. (CUB Exhibit 1.0, p. 7) Staff witness Pound explained in rebuttal testimony that, in addition to the ICC's CSD, customers have several options available for dispute resolution after first contacting their RES to revolve a potential dispute. These options include CUB, the Illinois Attorney General's Office and the Better Business Bureau. She stated that while Mr. McDaniel was correct that the protections contained in Part 280 could be considered "back end," a customer's service will be protected from

disconnection during the ICC's CSD dispute resolution process. (ICC Staff Exhibit 9.0R, pp. 8-9)

CUB witness McDaniel further stated that Ameren intended to remove the customer's voice from the dispute process with the removal of the following sentence: "charges billed by the Company to a Retail Customer for the RES' electric power and energy supply service are deemed to be disputed if such Retail Customer contacts the Company and claims that such charges are not correct." (CUB Exhibit 1.0, p. 6) Staff witness Pound explained that this proposed change did not remove the customer's voice in a dispute but rather directed it to the appropriate place (the RES and/or CSD) to be heard. (ICC Staff Exhibit 9.0R, pp. 9-10) As Ameren witness Pontifex stated in his revised rebuttal testimony, "the AIU have no practical ability to govern the relationship between the customer and the supplier." (Ameren Exhibit 7.0-REV, p. 4) Staff witness Pound agreed that Ameren was not the appropriate entity to decide whether a charge between a RES and a RES customer was disputed. (ICC Staff Exhibit 9.0R, p. 10) Mr. Pontifex provided a detailed description of the current process Ameren had in place for disputed charges as well as the recommended process for a common RES disputed charge under the UCB/POR Program. Mr. Pontifex explained that in the recommended process for a disputed charge under the UCB/POR Program, Ameren will enter a suspend charge on the supply charges at either the direction of CSD or the RES. (Ameren Exhibit 7.0-REV, p. 12) A suspend charge entry removes the disputed dollar amount from being subject to collection action or late payment charges until the next bill date or a specific date if the next bill date would not provide 14 days for resolution of the dispute. (ICC Staff Cross Exhibit 1 – Pontifex, p. 2) In addition, Mr. Pontifex clarified

during cross-examination that the suspend charge mechanism has a specific flag for RES disputed charges. (Tr., April 6, 2009, p. 36)

CUB witness McDaniel initially stated that Ameren's proposed tariff failed to include a dispute resolution process. (CUB Exhibit 1.0, p. 3) However, CUB witness McDaniel's position in rebuttal testimony was that the dispute mechanism outlined by Ameren witness Pontifex in rebuttal testimony was a good starting point but required improvement as it requires four calls by a customer in order to dispute a charge, assuming the customer contacts the utility first. (CUB Exhibit 3.0, p. 3) In Staff's view, Ameren's agreement to incorporate Staff's suggestions for the definition of disputed charges resolved this problem by providing the customer with the contact information for the RES and ICC's CSD in the customer's initial call. This change, along with changes to the payment due date for the UCB/POR Program, as well as Ameren witness Pontifex's explanation of the suspend charge mechanism and the dispute resolution process contained in Part 280 create a fair dispute resolution process that is clear to both the RES and Ameren customers choosing a RES. Ameren's agreement to educate the customer about the dispute resolution process and to provide the information necessary to resolve a dispute upon the customer's initial contact should reduce the confusion and frustration CUB witness McDaniel is concerned about (CUB Exhibit 1.0, p. 6).

Staff witness Pound agreed with Mr. McDaniel that the Straw Man proposal of retail electricity requirements resulting from the ICC-led workshop process would aid in the creation of potential legislation or help to guide a rulemaking at the Commission. (ICC Staff Exhibit 9.0R, p. 7) While it is Staff's opinion that bringing additional clarity to

existing consumer protections would be beneficial, customer protections applicable to Ameren's UCB/POR Program participants already exist. Staff recommends that the Commission not consider CUB witness McDaniel's recommendation to reject Ameren's proposed UCB/POR Program.

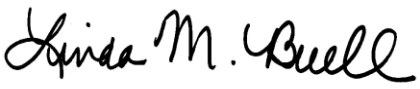
G. Other

Staff is unaware of additional Unresolved Issues at this time. However, if other parties' Initial Briefs identify additional Unresolved Issues, Staff will respond to those issues in its Reply Brief.

IV. CONCLUSION

For the reasons set forth *supra*, Staff respectfully requests that the Commission's Final Order in the instant proceeding reflect Staff's recommendations regarding the Companies' proposed UCB/POR Program and that the Companies' proposed tariff changes be modified in accordance with Staff's recommendations in Appendices A and B attached hereto.

Respectfully submitted,



LINDA M. BUELL

Counsel for the Staff of the Illinois Commerce Commission

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LINDA M. BUELL
Office of General Counsel
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
Phone: (217) 557-1142
Fax: (217) 524-8928
E-mail: lbuell@icc.illinois.gov

JESSICA L. CARDONI
MICHAEL J. LANNON
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle, Ste. C-800
Chicago, IL 60601
Phone: (312) 793-3305
(312) 814-4368
Fax: (312) 793-1556
E-mail: jcardoni@icc.illinois.gov
mlannon@icc.illinois.gov